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THE MAGNAVOX COMPANY, et al., )
)
Plaintiff, )
)
vs. ) No. 74 C 1030
) and
CHICAGO DYNAMIC INDUSTRIES ) 74 C 2510
and SEEBURG CORP., )
)
Defendants. )

BEFORE: The Honorable JOHN F. GRADY, Judge.

Monday, December 27, 1976

2:10 o'clock p.m.

Resumed pursuant to recess.

FILED

MAR 2 - 1977

H. Stuart Cunningham, Clerk
United States District Court

PRESENT:

MR. ANDERSON
MR. WILLIAMS
MR. ALLEGRETTI
MR. BRIODY

appeared for The Magnavox Company;

MR. GOLDENBERG
MR. RIFKIN

appeared for the Seeburg defendants and
World Wide Distributors.

THE WITNESS: You have the English control on, so I lost it.

I will demonstrate on this box. Up she goes. I'm sorry. But every time I turn the knob, it seems to go in the opposite direction.

The object was to demonstrate the angle of incidence equal to the angle of reflection. What I meant was that it comes off the wall mirror-image fashion.

MR. ANDERSON: Thank you.

BY MR. ANDERSON:

Q Mr. Baer, after you completed the work with the Magnavox engineers on the development of Odyssey 1 TL 200 in 1971 and early 1972, I think you said, were you involved at all in the actual introduction and marketing of the game?

A I was involved to the extent that I got invited to the first public showing and had continuing discussions with marketing people at Magnavox. But officially my responsibilities ceased when we got the engineering personnel at Magnavox under way in their initial attempt to get Exhibit 62 reformatted for production.

I did go back to New York in, I believe

it was, May of 1972 to see the first public demonstration of that model Odyssey game.

Q Where was that first public demonstration held?

A I believe it was in a restaurant, Tavern on the Green, in Central Park West, New York City. The showing was held for the press. There was quite a large gathering, maybe 200 people being present.

Q I would like you to look at Plaintiff's Exhibits 7-B, 7-C and 7-D, and I ask you if that refreshes your recollection as to when the press -- as to when the public announcement was made?

A Yes, it does. These are references to that demonstration, the first one being in the Wall Street Journal on May 11th. That is Exhibit 7-B. The second one is a reproduction of a "Consumer Electronics Newspaper" article dated May 15th.

And there is Exhibit 7-C, in which a reference is made to a "Mystery Product Unveiled by Magnavox," which turned out to be a TV game.

THE COURT: As an aside, read the first sentence in the Time Magazine article. That is rather a depressing fact, if it be a fact, I would say.

MR. GOLDENBERG: Your Honor, my curiosity has been aroused.

THE COURT: It says:

"The average American spends six hours a day gazing passively at television."

That corresponds with similar statistics I have read elsewhere. The amount of time that the so-called average American spends watching that television tube is just astounding, especially when you divide it into the number of waking hours he has during the week.

But that has nothing to do with the case on trial.

MR. ANDERSON: Odyssey was supposed to change that a bit.

MR. GOLDENBERG: Read Mr. Buchwald's column this morning.

THE COURT: Buchwald?

BY MR. ANDERSON:

Q You mentioned the reference to a "Mystery Product" in Exhibit 7-C. Is that a term that Magnavox or Sanders used, Mr. Baer?

A There I have to rely on memory. I believe George Frizell, who was then president or chairman of the Consumer Operation of Magnavox, or some such responsible position, had previously talked about a mystery product that was

4

about to be announced to the trade, and that is how the term came about. This was the first time they unveiled a mystery product and identified it as a TV game.

Q At the first public announcement who was in attendance?

A Two hundred members of the press and other invited guests.

Q At that first public announcement of the "mystery product" was there any indication from anyone that this was a known product or a product that had been in existence prior to the announcement?

A No, sir.

Q What was the general reaction at that meeting?

MR. GOLDENBERG: Your Honor --

THE COURT: I understand the objection.

On the other hand, I don't know of any other way to get at the information, which I think is relevant. I understand that we are talking about unidentified voices. But it almost is in the area of the "spontaneous exclamation" type of evidence.

I will overrule the objection.

MR. ANDERSON: Thank you, your Honor.

BY THE WITNESS:

A I can say this much, that in addition to Odyssey, in fact preceding the demonstration of Odyssey at that public showing, a number of other products were shown, and in fact Odyssey was the one product

that caused a considerable amount of commentary and discussion and visible agitation among all those that were present there, although they had showed some significant other new products. They showed a new TV camera, if I remember right, and a few other products that should have aroused some interest but didn't.

BY MR. ANDERSON:

Q Mr. Baer, in your initial testimony, you referred to Plaintiff's Exhibit 64-2 through 64-6, your longhand document of September, 1966.

THE COURT: What is the number?

MR. ANDERSON: 64-2 is the number of the first page, and it runs through 64-6.

BY MR. ANDERSON:

Q Mr. Baer, at the second page of that document you read into the record your longhand entry concerning the manner in which your proposed game would be hooked up to a TV set.

Can you either summarize that or reread it, please?

A I think it is just as easy to read it. If you go to the fourth line, it says:

"Entry into the TV set is to be obtained either through direct connection to the video system (at the second detector) or by con-

not called a ball at all, it's simply referred to as either a -- it's referred to as a hit spot?

A That's right.

MR. ANDERSON: Your Honor, I would object to testimony about claims or claim interpretation by this witness. I don't think that was within the scope of the direct, and the interpretation of the claims is a legal interpretation.

THE COURT: Overruled.

BY MR. GOLDENBERG:

Q Mr. Baer, when did Mr. Rusch join your group?

A Roughly in March of '67. He did not actually join the group in the sense of becoming responsible to me formally until sometime later that year, but our first contacts and discussions, and resultant suggestions and interchange of ideas, between Rusch and myself, took place around about March of '67.

Q My question was when did he join the group?

A Well, let me say this, Mr. Goldenberg, in explanation of how we operated Sanders. We very frequently move engineers about without formally reassigning them to a new supervisor, but, to all intents and purposes, that person, at least for that part of the day, works on a job or task and is under the responsibility of some senior supervisor, he works for that man, is in

his group, though not formally, organizationally transferred, and it was in that kind of capacity that Mr. Rusch reported to me back in March, April, thereabouts of '67.

Q Well, would you agree that the records would indicate that he was formally assigned to the group in July of 1967?

MR. ANDERSON: I would like to object, your Honor. We have a stipulation, paragraph 30, specifically on this subject, which reads:

"The subjects matter of each of the patents in suit resulted from work done at Sanders by a research group which first included Ralph H. Baer and at least as eanly as May, 1967 also included William L. Harrison and William T. Rusch."

MR. GOLDENBERG: Is that our stipulation?

MR. ANDERSON: Yes, that is our stipulation.

MR. GOLDENBERG: I would still repeat my question, your Honor, and I will get to complete this matter shortly, and I don't think the stipulation affects what I am about to show.

THE COURT: All right, overruled.

MR. ANDERSON: Well, your Honor, if the reference --

THE COURT: I would agree that if it's stipulated,

that ends the matter, except Mr. Goldenberg indicates he has another purpose for asking the question, and on that basis, I am overruling the objection.

MR. ANDERSON: I understand, but I was trying to make another point, and that is if the witness is being interrogated about the records, then the records should --

THE COURT: Well, I think that's true, but perhaps these records are known to all of you.

MR. GOLDENBERG: I think we do know the records, your Honor, and if Mr. Baer doesn't know the answer, we will go to the records, to the extent we have to. I thought he might, and we would just shorten the matter.

BY MR. GOLDENBERG:

Q Do you know the answer to that, sir? My question was wasn't he formally assigned in July of 1967?

A Yes, I believe so.

Q Now, what work did Mr. Rusch do starting at this time that you said he first joined the group? What role did he play?

A If you are referring to that work which he did for me in connection with TV games, he participated in a number of meetings during which we discussed what we might do with some of the rudimentary things I had done up to this date, and he was invited to come up with some ideas, Mr. Rusch being a very creative person, and he went away to his office and produced some papers subsequently, which I think we read into the record here, because they resulted in a memo that showed up about May, early May, typed by my secretary at the time for Mr. Rusch, addressed to me by Rusch.

Q All right, sir, beyond preparing that memorandum-- I apologize for the failure of our records not to have it at hand --

THE COURT: That was 66-44.

MR. GOLDENBERG: We apologize, your Honor.

BY MR. GOLDENBERG:

Q I show you a document, Plaintiff's Exhibit 64-44. Is that the memorandum that you have in mind, sir?

A Yes, sir.

Q Now, beyond preparing that memorandum, what else

did Mr. Rusch do at that time?

A I don't believe he did very much at the time. He was still assigned to the Corporate Director of IR&D, Mr. Campman, and in that connection, he had other duties, so what time he spent working for me was limited. The only activity that we can recall having taken place relates to that that was involved in generating this memo.

Q Well, now, I believe you testified that there was a company requirement of keeping a daily record of bench activities?

A That's correct.

Q So if we wanted to find a record of Mr. Rusch's activities, we could look in his notebook, couldn't we, to find it there?

A You could, providing he adhered to the corporate director and filled out a notebook page for every day he was at Sanders.

Q Mr. Baer, I show y ou Plaintiff's Exhibit 68, which is Mr. Rusch's notebook, and the first entry I can find in that notebook, with respect to TV games, is on page 95, and the top of that page is dated September 25.

THE COURT: '67?

MR. GOLDENBERG: '67.

THE WITNESS: '67, your Honor.

3

BY MR. GOLDENBERG:

Q Are you aware of any earlier entries in that notebook?

A No.

Q So that it would appear that Mr. Rusch gave you a memorandum in May, and then his first recorded activities are -- that is, in May of '67, -- and his first recorded activities are in September of '67, is that right?

A That is correct.

Q And he had nothing to do with the device that was demonstrated to Sanders Associates management in June of '67, did he?

A Not to my recollection.

Mr. Goldenberg, may I say something before you take the notebook away from me?

Q Certainly.

A That notebook of Harrison's indicates that during the period prior to September, '67, he worked on another project unrelated to TV games.

Q You said "Harrison."

A I mean Rusch. I'm sorry.

Q You meant Rusch?

A Rusch. That project was also under my congnizance, so we were in daily contact through that period via that

program.

Q I see, sir, but he was not working on TV games during that period, was he?

A What I indicated is we undoubtedly had informal discussions that simply didn't get into the notebook at least some time around July or October of that year -- I mean July or August of that year.

Q But none of that is recorded in this notebook?

A No, sir.

Q Do you have any knowledge of any other notebook or document --

A No.

Q -- in which such work might be recorded?

A I do not.

Q All right, sir, I believe you described to some degree the business of Sanders Associates. I don't know that it was very complete. But I would ask you, in this period, 1966-1967, could you describe what the business of that company was?

A Yes, certainly. At that time, as well as at the present, Sanders Associates is engaged largely in the development, and, in many cases, the manufacture of equipment for the military, specifically for the Defense Department. Most of the equipment is in the nature of counter-

measures equipment. Radar countermeasures, as an example, are predominant in the kind of products we develop and manufacture for the Navy, the Army, the Air Force, foreign governments, and also infrared countermeasures, anti-submarine countermeasures are typical of the sorts of things we do at Sanders, for which we employ quite a few hundred engineers, and several thousand production workers and technicians.

Q Now, at that time you were the manager of the equipment design division, is that correct?

A That's correct.

Q What was the responsibilities of the Equipment Design Division?

A The Equipment Design Division was then, and it is today, a functional organization in the sense that it has capabilities for providing electronic engineering, mechanical engineering, such functions as printed circuit layout, reliability analysis, and many other functions necessary for the development of electronic equipment, on the basis of support to other divisional entities within the company.

As an example, a division might be contracted for a radar countermeasures device. That division would come to the equipment design division, it would come

What I said, sir, is that Figures 7, 8, 9 and 10 refer to ways of playing games on a television set that we have not at all discussed here before, and are really quite different from those which we had heretofore talked about.

BY MR. ANDERSON:

Q Now, the subject matter of the Rusch patent 28,507, is different from the subject matter of your patent '480, is it not?

A Yes, sir.

Q Well, can you characterize the important differences that -- the most important differences that you see in the patent '507 over the patent '480 that show that the subject matter of the '480 patent fails to anticipate the invention of the '507 patent?

MR. GOLDENBERG: Your Honor --

THE COURT: I was just thinking in my own mind he just waived any objection on that, so on recross this is fair game.

MR. GOLDENBERG: Thank you.

THE COURT: Go ahead, Mr. Baer.

BY THE WITNESS:

A The -- I'm sorry -- the primary difference between by '480 patent and Rusch's '284 patent, or Reissue 28,507, is in the addition of the interactive

ball spot, the ability to play interactive ball games.

BY MR. ANDERSON:

Q When you say "interactive ball spot", would you go into a little more detail on what you mean by an interactive ball spot and the ability to play interactive ball games?

A I mean the generation and display of what the patent calls the hit spot or the hit symbol, namely, that symbol which denotes a ball in the ball game, and which is moved between symbols that might denote the paddles in a particular game, as intercepted by the paddles, and has its path, horizontal path, reversed after intercept, and, in general, has its path controlled by a number of inputs, some machine-generated and some human participant-generated.

Q Now, Mr. Goldenberg asked you about the use of a gun in a target game in your '480 patent, and used the term "coincidence." I think there may be some doubt about what coincidences refer to, and would you explain specifically how the target game functions in your '480 patent?

A Yes, I will. The target game functions by pointing a toy rifle, and imaging the spot of a TV symbol through a -- on the face of a photosensitive device, such as a photoresistor device, which is lined